UNITED STATES PATENT AND TRADEMARK OFFICE

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/624,223	HODSON ET AL.
	Examiner	Art Unit
	CHARLES E. LU	2161

Office Action Summary

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>29 December 2008</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-30* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-30* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some *   c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

1. This Action is in response to Applicant's request to reopen prosecution dated 12/29/2008 in response to the Examiner's Answer dated 10/29/2008. Claims 1-30 are pending and rejected.

Response to Arguments/Response to Amendments

2. Claims 1, 13, 25, and their dependent claims; Eilbacher in view of Jackson

Applicant argues that Jackson's "response time" is not a measure of effort to respond since it would include delays, and thus, Jackson's "response time" is unrelated to the claimed "effort value" (Brief, p. 7, 9th line from bottom). The examiner respectfully disagrees.

Applicant argues that the claimed "effort" is "the effort needed to respond to a message which includes reading, evaluating, and preparing a reply such as an e-mail (see e.g., specification, pp. 12-13), not the time between transmission of the initiating email by the customer and the receipt of a response from the agent" (Emphasis Added, see Brief, p. 7, 2 lines from bottom). However, this language is not recited in the claims, and Applicant is clearly relying on limitations from the specification. The broadest reasonable interpretation in light of the specification is applied to the claims, but limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In this case, the claimed "effort value" is understood to be any measure of effort to respond. The claim does not require that the "effort value" not include delays, and

also does not require that "effort" be limited to only the agent's effort in reading, evaluating, and preparing a reply.

Thus, Jackson's "time to respond to an e-mail" meets the claimed "effort value" because the time to respond is a measure of effective effort to respond to a message. In other words, the time it takes to respond to an e-mail reflects the overall effort to respond to an e-mail.

Applicant further argues that Jackson's "e-mail response time" includes various delays, such as delays before opening the e-mail and delays in beginning to prepare a response (Brief, p. 7, 7th line from bottom). However, it should be noted that Jackson does not actually state that the "e-mail response time" includes these various delays. For the sake of argument, even if Jackson's email response time did include delays, Jackson would still teach or suggest the claimed subject matter. The mentioned delays would suggest that the agent is not putting forth effort to respond to the client e-mail, and thus, the delays would still be a measure of effort (or lack thereof). For example, an agent delaying to open a client e-mail and delaying to begin to prepare a response suggests that the agent is procrastinating, and thus indicates a lack of effort. The claims do not require that "effort to respond" be measured in any particular way. Therefore, even if Jackson's e-mail response time included delays, Jackson would still teach or suggest the claimed "effort value."

Also for the sake of argument, Eilbacher, the primary reference, teaches indicating whether a customer's experience was satisfactory or unsatisfactory (col. 12, ll. 54-55). This may also suggest an indication of effort because an agent should strive for

a good customer experience. However, to be more explicit in meeting the claimed

"effort value," the examiner relies on Jackson, the secondary reference. See above

discussion. As such, the prior art teaches or suggests the claimed subject matter.

3. Claims 4 and 16, Eilbacher in view of Jackson

Applicant argues that Eilbacher does not teach "counting the number of

exchanges between the agent and the client" (Brief, p. 8, section "b"). The examiner

respectfully disagrees.

Eilbacher teaches, "All of the interactions during the call are recorded,

including…time spent on hold, [and] number of transfers and conversations with an

agent. These types of recordings allow for evaluation of the full customer

experience…." (Emphasis Added, col. 10, 13-18).   Since Eilbacher records the number

of transfers and conversations with an agent, Eilbacher counts the number of

exchanges between the agent and client, as claimed. As such, the prior art teaches or

suggests the claimed subject matter.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of
matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the
conditions and requirements of this title.

4. Claims 1-12 are rejected under 35 U.S.C. 101 for being directed to non-

statutory subject matter.

As to claim 1, the claimed method is understood to be a method of purely mental steps, which is not statutory. A 101 process must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter to a different state or thing. Neither of these criteria is met. Specifically, the claim is not tied to any particular apparatus, and since the claim merely opens a file, measures activity, adds the measured activity to the file, and compiles a report based on the file, the claim does not transform underlying subject matter to a different state or thing. The claim should positively identify the other statutory class to which it is tied, or positively recite the subject matter that is being transformed. See *In re Bilski* and *In re Comiskey*.

The claimed "contact center apparatus" does not appear to be limited to hardware. Thus, the claim is not tied to a particular machine.

Claims 2-12 depend from claim 1 and are rejected based on the same reasons as claim 1.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 1-2, 4-5, 7-9, 13-14, 16-17, 20-21, 23, 25-26, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eilbacher et al (U.S. Patent

6,724,887), hereafter "Eilbacher," in view of Jackson ("Handling E-mail in a

Customer-Centric Organization").

As to claim 1, Eilbacher teaches the claimed subject matter including:

Compiling performance reports (col. 10, ll. 50-62) in a contact center (fig. 5,

#201) serving a plurality of clients (fig. 3, #100) using a plurality of agents (fig. 3, #104);

Opening a transaction file (col. 10, ll. 28-44) for saving information about

exchanges (col. 6, ll. 1-8) between an agent of the plurality of agents and a client of the

plurality of clients;

Measuring indicia of activity for asynchronous Internet transactions (e.g.,

satisfactory or unsatisfactory experience, col. 12, ll. 54-55, or various captured data, col.

10, ll. 27-44, including email communications, fig. 5, #202) for the exchanges between

the agent and client.

Adding the measured indicia of activity to the transaction file (col. 12, ll. 54-64,

col. 11, ll. 50-54, col. 10, ll. 27-61); and

Compiling a report based upon the transaction file (col. 9, ll. 57-67, col. 12, ll. 54-

64).

As to the teaching of asynchronous transactions, see fig. 5, #202 and related

description). An email transaction is asynchronous because it is an intermittent

transaction in which data is created and then transmitted, consistent with the description

in Applicant's specification (p. 10).

Eilbacher does not expressly teach an effort value, which represents effective

effort to respond to each transmission within each transaction.

However, Eilbacher further discloses that communication can include e-mails and phone conversations between agent and client (fig. 5, col. 6, ll. 1-7). Many types of communications are analyzed (fig. 7). As discussed above, e-mails are asynchronous.

Furthermore, Jackson discloses an effort value that represents effective effort to respond to a transmission within a transaction ("e-mail response time", p. 6).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Eilbacher, such that e-mail conversations are processed/analyzed like phone conversations, and conversations are additionally analyzed in the manner disclosed by Jackson in which an effort value is recorded with email communications between agent and client. The effort value would thus reflect effective effort associated with the transaction, as claimed. The motivation would be to provide a service level standard, as taught by Jackson (p. 6).

As to claim 2, Eilbacher as applied above further teaches wherein the step of opening the transaction file further comprises detecting an initial contact between the agent and the client (e.g., caller initiated transaction, col. 9, ll. 10-20), and tagging subsequent transmissions as belonging to the transaction (col. 9, l. 10-50). Note that the tagging has to occur or else the system would not know what communications to group together into a customer experience (col. 9-10).

As to claim 4, Eilbacher as applied above further teaches wherein the step of measuring the indicia of activity further comprises counting a number of exchanges between the agent and the client (e.g., number of conversations or number of transfers, col. 10, ll. 13-17).

Eilbacher and Jackson do not expressly teach, "to close a sale."

However, Eilbacher teaches counting the number of exchanges in "cradle-to-grave" transactions (col. 10, ll. 4-17). "Cradle-to-grave" transactions can end when the agent completes a transaction (col. 9, l. 18). Since Eilbacher is drawn to customers of a call center, the transactions may be sale transactions (col. 1, l. 64, col. 2, l. 54, col. 7, l. 65).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Eilbacher and Jackson, such that the agent's transactions are sales transactions. Therefore, when the agent completes a transaction, the agent closes a sale, which meets the claimed subject matter. The motivation would have been to use Eilbacher in a sales environment, as known to one of ordinary skill in the art.

As to claim 5, Eilbacher as applied above further teaches wherein the exchanges comprise email (see fig. 5 and related text).

As to claim 7, Eilbacher and Jackson as applied above do not expressly teach how much time has elapsed between successive transmissions of each asynchronous transaction.

However, Eilbacher teaches a "wait time" col. 6, ll. 35-40 and measuring the amount of time a customer is on hold (see description for figs. 2-3). The time on hold can be an elapsed time between successive communications. Eilbacher also teaches recording start/end times for communication, and states that all data associated with customer-agent communication can be recorded (col. 8, ll. 50-65).

Since e-mail conversations are treated like phone conversations as discussed above, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Eilbacher and Jackson, such that elapsed time between successive transmissions of email transactions are determined and recorded. The motivation would have been to facilitate customer experience analysis, taught by Eilbacher (col. 11, col. 6, ll. 35-40).

As to claims 8 and 9, Eilbacher as applied above further teaches segregating exchanges between the agent and client from other exchanges between other agents and other clients (Eilbacher, col. 10, ll. 36-44), and from other exchanges between the agent and the client (using a time stamp for an exchange between agent and client, col. 10, l. 37), further comprising correlating an identifier of the agent and client with the transaction file (i.e., customer and agent identification, col. 10, ll. 36-37). Since every transaction is marked by a time stamp, agent name, customer name, etc., each exchange is segregated from other exchanges between agents and other clients, as well as the agent and the client, because the other transactions are marked with different time stamps, agent names, and customer names.

Claims 13-14, 16-17, 20-21, 23, 25, and 28 are rejected based on the same reasoning as the above claims.

As to claim 26, Eilbacher as applied above further teaches "selection processor…initial contact" as seen in claim 2 above, and determining a type for each transaction, and attaching a time stamp to each transmission within a transaction (col. 10, ll. 27-45).

6. Claims 3, 10, 15, 19, 22, 24, 27, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eilbacher in view of Jackson, further in view of Ulrich (U.S. Patent 6,895,438).

As to claim 3, Eilbacher and Jackson as applied above teach identifying a prior contact of an agent involving the client (Eilbacher, col. 13, ll. 1-40, col. 5, ll. 22-25). Contacts of an agent are stored in a database (Eilbacher, col. 10, ll. 27-44).

Eilbacher and Jackson do not expressly teach wherein a prior contact list of the agent is searched to identify prior contacts, or wherein the searching is performed when the initial contact is detected between the agent and client.

However, Eilbacher teaches detecting initial contact (using cradle to grave recording, col. 9, ll. 14-20), and storing the agent's communications in a database (col. 10, ll. 28-44). The database stores the customer and the agent (col. 10, ll. 36-39), and marks unsatisfactory communications (col. 11, ll. 51-53).

Furthermore, Ulrich discloses a contact list (fig. 3A-3B).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Eilbacher and Jackson, such that unsatisfactory contacts with customers (Eilbacher, col. 11, ll. 51-53) are stored in the list. The motivation would have been to facilitate knowing if the agent had a previous conversation(s) with the customer (by searching a smaller list, instead of potentially the entire customer database), and to inform the agent when contact is established that he/she is speaking to a customer with a previous unsatisfactory experience, as taught by Eilbacher (col. 5, ll. 22-25).

As to claim 10, Eilbacher and Jackson do not expressly teach wherein correlating an identifier of the agent and client with the transaction file further comprises matching e-mail addresses of the agent and client to e-mail addresses within the transaction file.

However, Ulrich teaches wherein correlating an identifier of the agent and client with the transaction file further comprises matching e-mail addresses of the agent and client to e-mail addresses within the transaction file (see fig. 3).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Eilbacher and Jackson, such that the above claimed subject matter is implemented. The motivation would have been to facilitate organization of data, as known to one of ordinary skill in the art.

As to claim 19, Eilbacher and Jackson do not expressly teach wherein word content of each exchange is used to determine whether different transactions are part of one or different transactions.

However, Ulrich teaches wherein word content of each exchange is used to determine whether different transmissions are part of one transaction or different transactions (see fig. 3, col. 7, ll. 45-55).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Eilbacher and Jackson, such that word content is used as claimed. The motivation would have been to facilitate organization of data, as known to one of ordinary skill in the art.

As to claim 24, Eilbacher and Jackson do not expressly teach correlating a subject matter identifier field of the exchanges with a subject matter identifier of the transaction file.

However, Ulrich teaches correlating a subject matter identifier field of the exchanges with a subject matter identifier of the transaction file (see fig. 3).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Eilbacher and Jackson, such that the above correlation is accomplished. The motivation would have been to facilitate organizing data, as known to one of ordinary skill in the art.

As to claim 29, Eilbacher and Jackson teach an effort value, as discussed above, but do not expressly teach using proportionality to calculate an equivalent time of effort.

However, Ulrich teaches wherein an effort value is determined using proportionality to calculate an equivalent time of effort (e.g., col. 7, l. 35 – col. 8, l. 67, col. 10, l. 13 – l. 49). This equivalent time of effort is an equivalent time from the reader's perspective.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Eilbacher and Jackson, such that an equivalent time of effort is additionally calculated. The motivation would have been to provide a heuristic measure of who and what is consuming time and whether those demands on time are line with organizational priorities, as taught by Ulrich (col. 10, ll. 46-50).

Claims 15, 22, and 27 are rejected based on the same reasoning as the above claims.

7. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eilbacher in view of Jackson, further in view of Armstrong (U.S. Patent 6,356,633).

As to claim 6, Eilbacher and Jackson do not expressly teach wherein the indicia of activity comprises an average time between messages of transactions for each agent.

However, Armstrong discloses an average time between messages of transactions for each agent (col. 10, ll. 4-11).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Eilbacher and Jackson, such that an average time between messages is recorded. The motivation would have been to provide statistic and reports for e-mail messages, as taught by Armstrong (col. 9, l. 64 – col. 10, l. 4).

8. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eilbacher in view of Jackson, further in view of McCalmont et al (U.S. Patent 5,621,789), hereafter "McCalmont."

As to claim 11, Eilbacher and Jackson teach completed transactions, as discussed above, but do not expressly teach determining and displaying a total effort value between the agent and client and determining in real time an ongoing transaction total effort value for ongoing transactions.

However, Jackson teaches or suggests an ongoing email transaction because "the company would be more likely to retain customers if agents kept [the customers] in the loop even if [the agents] couldn't resolve [customer] problems right away" (p. 6).

McCalmont displays a total effort between agent and client in real time (fig. 5b).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Eilbacher and Jackson, such that real time statistics on total ongoing transaction effort between the agent and client are displayed. The motivation would have been to indicate to the user the efficiency of his work, as taught by McCalmont (col. 6, ll. 62-64).

9. **Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eilbacher in view of Jackson, further in view of McCalmont, further in view of Ulrich.**

As to claim 12, Eilbacher, Jackson, and McCalmont do not expressly teach correlating a subject matter identifier field of the exchanges with a subject matter identifier of the transaction file.

However, Ulrich teaches correlating a subject matter identifier field of the exchanges with a subject matter identifier of the transaction file (see fig. 3).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Eilbacher, Jackson, and McCalmont, such that the above correlation is accomplished. The motivation would have been to facilitate organizing message data, as known to one of ordinary skill in the art.

    10. Claims 18 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eilbacher in view of Jackson, further in view of Ichbiah (U.S. Patent 5,623,406).

    As to claims 18 and 30, Eilbacher and Jackson as applied above teach an effort value, as discussed above, but do not expressly teach wherein the effort value is determined based upon how long a transmission would have required had it been spoken, or based on the character length of the transmission.

    However, Jackson teaches that e-mail response time is as important as telephone response time (p. 6). Telephone responses can be spoken, and e-mail responses can be typed. Ichbiah states that normal speech is about 100 words per minute, and a skilled typist can be expected to type at 40-70 words per minute (col. 1, ll. 20-25). Typing at a certain number of words per minute is based on character length, since typed words have characters.

    Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify Eilbacher and Jackson, such that the email response time (effort value) is based on how long the email would have taken if it were spoken, or based on how long the email would have taken if it was typed by a skilled typist [e.g., 70 words (characters) per minute]. The motivation would have to apply a uniform performance standard for email agents, as known to one of ordinary skill in the art. For example, a call center might want to assume that typing an email deserves the same amount of response time as speaking. Other call centers might want to account for the fact that typing is slower than speaking.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles E. Lu whose telephone number is (571) 272-8594. The examiner can normally be reached on 8:30 - 5:00; M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Apu Mofiz can be reached at (571) 272-4080. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Charles E Lu/
Examiner, Art Unit 2161
1/30/2009

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Supervisory Patent Examiner, Art Unit 2161